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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,147	12/15/2005	Richard Bates	06007/40002	4807
7590 MARSHALL, GERSTEIN & BORUN LLP David C. Read Sears Tower, Suite 6300 233 S. Wacker Drive Chicago, IL 60606-6357			EXAMINER UNDERWOOD, DONALD W	
			ART UNIT 3652	PAPER NUMBER
			MAIL DATE 11/02/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s) .
	10/534,147	BATES, RICHARD
	Examiner	Art Unit
	Donald Underwood	3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 08/30/07.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-8, 11-16, 19 and 20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-8, 11-16, 19 and 20 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1)  Notice of References Cited (PTO-892)  
 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3)  Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5)  Notice of Informal Patent Application  
 6)  Other: \_\_\_\_\_

## DETAILED ACTION

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 6, 8, 11 13, 14, 16, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beck in view of Kobayashi, et al. and Crawley.

It would have been obvious to mount the excavating arm in Beck to pivot about a vertical axis to provide more flexibility in view of the teaching in Kobayashi (axis X1).

It would also have been obvious to provide stops to the turntable in Beck to control pivoting arc in view of the teaching in Crawley (figure 2 and column 4, lines 60-68).

Regarding claim 16, this claim was listed on the PTOL-326 as rejected but inadvertently omitted from this rejection in the first office action. Its arrangement is conventional and not disputed by applicant. See Beck, column 4, lines 58-65.

Applicant's position regarding the combination of Beck and Crawley has been carefully considered but is not deemed persuasive. The test in what do the references teach and what do they suggest to one having ordinary skill in the art. The examiner agrees that Beck provides a machine that rotates the cab 360 degrees. However Beck indicates that not all vehicles do this. Crawley teaches using stops to control rotation. In the opinion of the examiner an artisan would recognize that stops could be used in Beck to control rotation in view of their use in Crawley. For example, to provide a

vehicle to prevent the possibility of an extended boom ramming the engine compartment or to simplify the control operation in Crawley. Beck and Crawley relate to boomed construction vehicles and deal with rotating their booms. Crawley is thus not non-analogous art as argued by applicant.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beck in view of Kobayashi, et al. and Crawley as applied above together with the following comments.

It would have been obvious to provide a lock in Beck to promote safety in view of the teaching in Crawley (element 44).

Claims 5, 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beck in view of Kobayashi, et al. and Crawley as applied to claim 1 above, and further in view of Brown.

It would have been obvious to provide mudguards in Beck in view of the teaching in Brown (figure 1).

It would also have been obvious to substitute a sloping hood and single arm for the hood and arm in Beck in view of the hood and arm in Brown to provide more visibility for a driver in Beck.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beck in view of Kobayashi, et al. and Crawley as applied to claim 1 above, and further in view of Hayward.

It would have been obvious to substitute telescoping arms in Beck in view of the teaching in Hayward (figure 2) to provide more reach to the arms in Beck.

Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beck in view of Kobayashi, et al. and newly cited Tellden.

It would have been obvious to mount the excavating arm in Beck to pivot about a vertical axis to provide more flexibility in view of the teaching in kobayashi (axis X1).

It would also have been obvious to provide stops to the turntable in Beck to control pivoting arc in view of the teaching in Tellden (column 4, lines 1-10). Note Tellden teaches placing stops to provide any desired rotation radius.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Underwood whose telephone number is 571-272-6933. The examiner can normally be reached on Mon-Thursday 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on 571-272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Donald Underwood 10/29/07*  
Donald Underwood  
Primary Examiner  
Art Unit 3652

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